

Serial No.: 09/812,588
Art Unit: 3677

Attorney Docket No. 18433
Confirmation No. 2627

REMARKS

Independent Claims 1, 11 and 15, with Claims 2-10, 12-14, and 16-20, respectively, depending therefrom remain for consideration.

In the Final Office Action the Examiner rejected Claims 1-2, 4-5, 7, 11, and 13 under 35 U.S.C. § 102(e) as being anticipated by Klein (U.S. Patent No. 6,419,649). Claims 3 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Riley (U.S. Patent No. 5,048,310). Claims 6 and 12 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Yu (U.S. Patent No. 5,688,063). Claim 8 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Erickson (U.S. Patent No. 5,040,831). Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Moody (U.S. Patent No. 4,840,045). Claims 15 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Miceli (U.S. Patent No. 5,140,840). Claims 17 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Miceli and further in view of Riley. Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Miceli and further in view of Chiang (U.S. Patent No. 5,484,390). Claim 19 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Klein in view of Miceli and further in view of Chiang and Riley.

Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the cited and applied prior art. Reconsideration of the present application is respectfully requested.

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Regarding Claims 15-20, Applicants respectfully traverse the rejection under 35 § 103(a). The Examiner relies upon the item designated by reference number 76 in the Miceli patent to show a flexible cushioned element disposed between the vibratory motor and the battery. Reference number 76 in the Miceli patent is a helical spring. The helical spring 76 is not disposed between the battery 36 and the powered device (an LED 58) in the Miceli device, but is disposed outside of the housing. Further, the spring 76 in Miceli is electrically conductive and connected directly to the battery 36 via loop 74 and battery clip 70, which has a leg extending through slot 72 (see Fig. 5 of Miceli), whereas the flexible cushioned element 44 of the present invention is not electrically conductive and simply serves to separate the battery from the contact node on the vibratory unit until the post is threaded into the recess in the housing to the second position, forcing the battery against the contact node. Furthermore, regarding dependent Claims 17-19, there is no suggestion or motivation in the references for combining either three or four patents together to arrive at the present invention, but merely hindsight reasoning on the part of the Examiner, using the present application as a blueprint. *In re Dembiczak*, 175 F.3rd 994, 50 USPQ2d 1614 (Fed.Cir. 1999).

Regarding Claims 1-14, Applicants have attached a Declaration under 37 C.F.R. § 1.131 to remove the Klein patent as a reference. The Declaration shows that Applicants were in possession of the invention prior to April 5, 2000, which is the effective filing date of the Klein application, and diligently pursued filing of an appropriate patent application. Since Klein is the only reference applied to reject independent Claims 1 and 11, the Declaration should serve to overcome the rejection of independent Claims 1 and 11, as amended, and corresponding dependent Claims 2-10 and 12-14, respectfully. Furthermore, since Klein was applied as the

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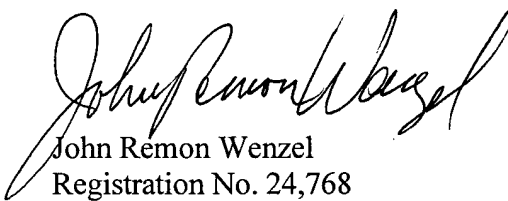
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primary reference in the rejection of Claims 15-20, and since the Declaration renders Klein unavailable as a reference against the present application, Applicants respectfully submit that Claims 15-20 are also allowable over the prior art of record.

Applicant respectfully submits that the present Response properly responds to the outstanding Final Rejection. No new matter has been introduced and no new issues have been raised. It is felt that no inordinate amount of time will be required on the part of the Examiner to review and consider this Response. In the event that an appeal is filed, it is requested that this Response be entered for purposes of appeal. This proposed Response does not raise any new issues that require further consideration or search and is a *bona fide* effort to satisfactorily conclude the prosecution of this application.

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



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RCL:rbl